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Quarterly Synopsis of Florida Cases

QUARTERLY SYNOPSIS OF FLORIDA CASES*

The Florida Supreme Court decided about two hundred cases during the period reported from January 6, 1955, through March 17, 1955. Those opinions (excluding memorandum decisions and a few others not considered of sufficient importance to be noted here) found from 76 So.2d 137 to 77 So.2d 880 are herewith reported. In addition five federal cases interpretative of Florida law are included. These cases were found from 215 F.2d 148 to 217 F.2d 840 (1955); and 124 F. Supp. 254 to 126 F. Supp. 744 (1955).

Attorneys. *Disciplinary proceeding.* A disciplinary proceeding is not a usual adversary proceeding. It was, therefore, unnecessary for the Supreme Court to determine whether an attorney, who had been granted an opportunity of reducing his suspension by paying the costs of the proceeding, should be relieved of any item included in the statement of cost.[1]

BILLS AND NOTES. *Banks: Holder in due course.* The plaintiff-bank supplied an implement dealer with contract and note forms containing a small advertisement of the bank in one corner. Various finance companies had purchased such notes and contracts from the implement dealer. The bank was not obligated to, and in fact did not, purchase all such notes and contracts. The mere appearance of the advertisement on the forms did not preclude the bank from being a holder in due course without notice of infirmities in the instruments sued on.[2]

CONSTITUTIONAL LAW. *Criminal Law: Rape.* The defendant was convicted of rape. He appealed on the grounds that the circuit court, which has criminal jurisdiction in capital cases only, did not have jurisdiction to try, convict and sentence the appellant to the penalty of death. This contention was based upon the provisions of the Child Molester Act[3] as amended,[4] which would limit the sentence to twenty-five years imprisonment. The Supreme Court held that the Child Molester Act was unconstitutional because of insufficient title, and that therefore the circuit court had jurisdiction to try the defendant and impose a death penalty upon the verdict of guilty without a recommendation of mercy.[5]

*This issue of the Quarterly Synopsis was written by Donald S. Zuckerman and edited by Jerry Mosca.

1. State ex rel. Florida Bar v. Murrell, 76 So. 2d 290 (Fla. 1954).
2. Citizens & Southern National Bank v. Stepp, 126 F. Supp. 744 (N.D. Fla. 1954).
3. FLA. STAT. § 794.01 (1953).
4. Fla. Laws 1953, c. 28158.
5. Copeland v. State, 76 So.2d 137 (Fla. 1954).

Due process: Eminent domain. The government sought to condemn a large number of tracts of realty. The value of 236 of the tracts was contested, and the owners of those 236 tracts were represented by twelve separate attorneys or law firms. The taking of evidence on the issue of value consumed seven weeks. The jury was swamped by an incredible volume of figures and general data. The United States Court of Appeals held that the district court abused its discretion in allowing the case to be presented before one jury, which retired for deliberation only after all evidence of value had been entered as to all tracts. The owners were denied due process.[6]

Federal gambling stamp. The statutory section[7] which provided that the holding, owning, having in possession or paying tax for a federal gambling stamp shall be prima facie evidence against the holder in any prosecution of such holder for a violation of state gambling laws, is unconstitutional.[8]

Grand jury: Self incrimination. The Supreme Court held that questions asked the relators and petitioners before a grand jury were sufficient to connect them with criminal communism. Hence, commitment to jail, for refusal to answer such questions on the ground of constitutional privilege[9] against self-incrimination, was without legal authority. Relators and petitioners were ordered discharged.[10]

Innkeepers. A statute[11] requires hotels, motels and other rooming houses to advertise full details of room charges when they advertise their rates. The Supreme Court held that such a statute is within the legislative prerogative to enact social legislation and does not deprive advertisers of equal protection of the law.[12]

CONTRACTS. *Brokers: Commission.* A contract between the vendors and the broker specified no time in which the broker was to perform services. A period of eighteen months had elapsed between the time of the broker's finding eventual purchasers, who were unwilling to pay the price then demanded by the vendors, and the time when the vendors had sold to the purchasers for a smaller amount than previously demanded. There had been no continuous negotiations between the broker and the purchasers; therefore, the vendor had had the right to assume that the broker had abandoned efforts in connection with the sale and they had been at liberty to sell the property to the purchasers without incurring liability for a commission.[13]

6. Gwathmey v. United States, 215 F.2d 148 (5th Cir. 1954).
7. FLA. STAT. §§ 849.01, 901.01, 902.13 (1953).
8. Jefferson v. Sweat, 76 So.2d 494 (Fla. 1954).
9. FLA. STAT. 876.01, 876.02, (4,5), 876.03; FLA. CONST. DECLARATION OF RIGHTS, § 12.
10. State v. Kelly, 76 So.2d 789 (Fla. 1954).
11. FLA. STAT. § 511.45 (1953).
12. Adams v. Miami Beach Hotel Association, 77 So.2d 465 (Fla. 1955).
13. Shuler v. Allen, 76 So.2d 879 (Fla. 1955).

Counties: Bonds. The appellants, securities dealers, were employed by the Board of County Commissioners to act as financial advisors. Their function was to insure a valid issuance of county courthouse and hospital bonds and sale thereof for the best price possible. Upon tabulation of the bids, it was ascertained that the bid of the appellants was highest. Thus, they were the purchasers of the bonds. The Supreme Court held that this did not preclude the appellants' recovery from the appellees for services rendered as such advisors.[14]

Insurance Policies: Recovery. An action was brought by the beneficiary to recover benefits payable under a life insurance policy. The policy provided that the agreement was null and void if the insured's death resulted directly or indirectly from the intentional act of any person. The Supreme Court held that this provision precluded recovery for the death of the insured as a result of a stab wound in the heart intentionally inflicted by another, regardless of intent to kill the insured.[15]

Modifications: Oral Agreement. An action was brought for the breach of an alleged oral contract for an exclusive sales agency. The evidence was as consistent with the hypothesis that the parties acted under a written contract as with the hypothesis that the parties acted under an alleged oral contract. Therefore, the rule that a written contract may be altered or modified by oral agreement, if the oral agreement has been accepted and acted on by the parties in such a manner as would work a fraud on either party to refuse to enforce it, was not applicable.[16]

Rescission: Estate by the entireties. An agreement between a mother and daughter purported to create an estate in property by the entireties. In law, an estate by the entireties can only be created between man and wife. However, the instrument was sufficient to create an agreement between the parties not to partition the property and to vest title thereof in the survivor to said agreement. The Supreme Court held that if either of the parties under this agreement could show a breach by the other, or show that the other party had made it unequitable or unduly burdensome for the complaining party to live by the contract, she would be entitled to have the contract rescinded and to have the rights of the parties adjudicated.[17]

CORPORATIONS. *Stock.* The statutes[18] and corporate charter authorized a stockholders' agreement providing that, when a debt evidenced by a pledge or encumberance of stock was in default, other stockholders could pay the amount of the debt and release the stock from encumbrance. The buyer on foreclosure of the pledge of stock bought with notice of such

14. Leedy, Wheeler & Alleman, Inc. v. Okaloose County, 77 So.2d 788 (Fla. 1955).
15. Golden v. Independent Life & Accident Insurance Co., 77 So.2d 84 (Fla. 1955).
16. Harris v. Air Conditioning Corporation, 76 So.2d 877 (Fla. 1955).
17. Forehand v. Peacock, 77 So.2d 625 (Fla. 1955).
18. FLA. STAT. §§ 610.03, 612.03 (1953).

an agreement. Therefore, he took the stock subject to the agreement and became subrogated to the rights of the pledgee as against the corporation and stockholders.[19]

CRIMINAL LAW. *Burglary.* The defendant was convicted of breaking and entering a dwelling in the nighttime with intent to commit a misdemeanor. The prosecutrix testified that the defendant rang the doorbell and said he wanted to come in and then kicked out the screen of the door and entered. This testimony disproved the necessary element of stealthiness,[20] therefore the conviction was void.[21]

Evidence: Appeal. The defendant was convicted on each of two informations charging (1) possession for purpose of sale, and (2) sale of obscene literature. On motion, the defendant was required to elect the case from which he desired to appeal.[23] Evidence of the sale of obscene literature to a witness other than the one named as buyer in the information was admissible for the purpose of showing intent or purpose for which the defendant had the literature in his possession.[23]

Forfeiture: Inotixcating liquors. In a proceeding for forfeiture of a truck and load of gins and whiskies, an intent to resell the liquor within the state could not be presumed. In the absence of evidence upon the point, the evidence did not sustain trial court's implied finding of illegal[24] transportation.[25]

Forgery. The defendant represented to a merchant that he had organized a baseball team known as the "Gainesville All Stars"; that if the merchant would contribute funds for the purchase of a uniform, his name would be written across the back of the uniform for advertising purposes. The merchant gave the defendant a check made payable to the "Gainesville All Stars." The defendant endorsed the check "Gainesville All Stars" using the name of a fictitious individual and cashed the check. The defendant was guilty of "forgery"[26] under the forgery statute.[27]

Habitual Criminal: Habeas corpus. The petitioner was sentenced to life imprisonment as an habitual criminal. In a habeas corpus proceeding he contended that his sentence was void because of his prior convictions was in excess of the maximum sentence allowed by statute. The Supreme Court held that the habitual offender statute,[28] in providing that persons three times convicted should be punishable under its terms, did not contemplate imposition of valid sentences as a necessary condition precedent

19. Weissman v. Lincoln Corporation, 76 So. 2d 478 (Fla. 1954).
20. FLA. STAT. § 810.07 (1953).
21. Peters v. State, 76 So. 2d 147 (Fla. 1954).
22. Simming v. State, 77 So.2d 833 (Fla. 1955).
23. Rocklin v. State, 61 So.2d 484 (Fla. 1952).
24. FLA. STAT. § 562.07 (1953).
25. Townsend v. State, 76 So.2d 888 (Fla. 1955).
26. FLA. STAT. §§ 674.11 (3), 674.69, 831.01 (1953).
27. Green v. State, 76 So.2d 645 (Fla. 1954).
28. Washington v. Mayo, 77 So.2d 620 (Fla. 1955).

to its applicability. Therefore, the defense of a prior excessive sentence did not act as an invalidation of the habitual offender proceedings.[29]

Larceny. The defendants, who allegedly stole one hundred and twenty-seven boxes of oranges, could properly be charged with the offense of grand larceny,[30] rather than with the offense of taking fruit from a citrus grove.[32]

COURTS. *Appeal: Costs.* The Supreme Court held that where minors were personally wholly unable to pay the costs of appeal, they were entitled to the benefits of the insolvency statute[32] for the purpose of taking the appeal. This notwithstanding that their families might be able to bear such costs.[33]

Appeal: Directed verdict. The evidence presented in a former appeal was exactly the same as that used in a second trial. The United States Court of Appeals held that the decision in the former appeal became the law of the case and as this court found at that time that it was not proper for a directed verdict to be granted, a directed verdict on the same evidence, by the trial court, will not now be allowed to stand.[34]

Appeal and Error: Negligence. An action was brought by a motorist against a railroad trustee for injuries to his person and property. In the absence of a railroad watchman, automatic signals or gates, the automobile driven by the plaintiff collided with a train at a crossing. A municipal ordinance provided that the crossing was to be guarded by a watchman, or, that automatic devices were to be used. The Supreme Court held that the admission of evidence concerning the mayor's apparent verbal attempt, in a conversation with the railroad superintendent, to countermand the ordinance, and a refusal to grant the motorist's requested charge that the ordinance was in effect, constituted reversible error.[35]

Appeal and Error: Privileged communications. The plaintiff in a paternity proceeding admitted that reversible error had been committed. The error was committed by permitting the defendant's former wife to testify concerning a communication made to her by the defendant at a time when the marital relationship was still in effect. Based on this the Supreme Court reversed the decree in favor of the plaintiff.[36]

Criminal Law: New trial. In a criminal action the burden is upon the state[37] to show either an abuse of discretion, or a reversible error committed by the trial judge in granting a motion for a new trial.[38]

29. FLA. STAT. §§ 775.10, 810.03 (1951).
30. FLA. STAT. § 821.12 (Fla. 1953).
31. Luther v. State, 76 So.2d 276 (Fla. 1954).
32. FLA. STAT. § 924.17 (1953).
33. Lawrence v. State, 76 So.2d 271 (Fla. 1954).
34. Rexford v. Royal Indemnity Company, 215 F.2d 693 (5th Cir. 1954).
35. Trabulsy v. Loftin, 76 So.2d 143 (Fla. 1954).
36. Brown v. May, 76 So.2d 652 (Fla. 1954).
37. FLA. STAT. § 924.13 (1953).
38. State v. Hill, 76 So.2d 155 (Fla. 1954).

Criminal Law: Plea. The defendant was convicted of burglary after entering a plea of guilty. The trial court refused to permit the defendant, who was a mature, college-educated man, to withdraw his plea,[39] though he had entered same without benefit of counsel. The defendant contended that he had been ignorant of the consequences of his plea. The Supreme Court held that under the circumstances the trial court did not abuse its discretion in its refusal, and affirmed the judgment.[40]

Declaratory judgment. A declaratory judgment provided that the court would retain jurisdiction over the parties and subject matter of the cause in order to entertain such further proceedings therein as might be proper. This was contrued to mean that the circuit judge, sitting as chancellor would consider any and all *equitable* claims which the appellant might appropriately present to him.[41]

Descent and distribution: Proof. A stepson, who had petitioned for his appointment as curator of the property of his stepfather, should have been given the opportunity to prove his right to institute such proceedings by showing that the stepfather did not have a living father, mother, brother, or sister, or collateral heirs of closer kin than a stepson.[42] If the stepson prevailed upon such an issue, he should be heard upon the question whether he should be appointed to take charge of the stepfather's property.[43]

Habeas corpus: Sentence. An information charging in separate counts desertion of minor children and withholding means of support from such children, charged but one offense.[44] Hence, detention of the defendant for more than one year, under consecutive sentences of one year imposed on each count, was unlawful. The defendant was entitled to discharge on habeas corpus.[45]

Witnesses: Fees. The Supreme Court held that fees for the testimony of an expert witness would be reduced in accordance with the provisions of the statute[46] setting the fee for an expert witness at $10 per hour.[47]

CREDITOR'S RIGHTS. *Injunction.* A creditor's action was maintained against an heir at law to enjoin the distribution of a distributive share which had allegedly been fraudulently transferred. The transferees were indispensable parties and the action could, therefore, not proceed without their joinder, notwithstanding the equity rule[48] which placed the court "at liberty to make a decree saving the rights of absent parties."[49]

39. FLA. STAT. § 909.13 (1953).
40. Stratton v. State, 77 So.2d 865 (Fla. 1955).
41. Priest v. Logan, 76 So.2d 883 (Fla. 1955).
42. FLA. STAT. § 747.08 (1951).
43. Grant v. Odom, 76 So.2d 287 (Fla. 1954).
44. FLA. STAT. § 856.04 (1951).
45. Stephens v. Mayo, 76 So.2d 656 (Fla. 1954).
46. FLA. STAT. § 90.231 (2) (1953).
47. H. J. Granger & Sons v. Clay County Farms, 77 So.2d 427 (Fla. 1955).
48. FLA. STAT. § 726.01 (1953); FLA. EQUITY RULES OF PROCEDURE, rule 18 (1953).
49. Martinez v. Balbin, 76 So.2d 488 (Fla. 1954).

DAMAGES. *Negligence.* The plaintiff complained of and was treated for pain in her back and legs. Her condition was deemed neurotic by the *defendant's* physician. The alleged injuries were sustained in an automobile accident with the defendant. There was no issue of liability in the case. The court held that an award of $2000 for injuries and pain and suffering would be made to the woman, who was entitled to at least nominal damages.[50]

DOMESTIC RELATIONS. *Divorce: Decree pro confesso.* A wife had been properly served with an original bill in the nature of a review to set aside her divorce judgment. The amended bill, which the husband filed but did not serve, did not supersede the original bill, and the husband could take a decree pro confesso on the original bill.[51]

Guardian and ward. A mother of minor children must be notified of proceedings for the appointment of guardianship, as required by the Guardianship Law.[52] Where the mother is not so notified, an order appointing a guardian is inoperative as to her.[53]

Support: Bastards. The evidence in a proceeding to reduce the amount of child care payments,[54] required of the defendant in a bastardy case, disclosed that if there had been any change in the defendant's condition, it was for the better. Therefore, reducing the amounts required in the original decree was an abuse of discretion.[55]

EQUITY. *Garnishment.* The Supreme Court held that a writ of garnishment[56] may issue in aid of a final decree in equity providing solely for the payment of money. Such an equity decree, when properly recorded, is just as much a lien as is a judgment of a court of law.[57]

Labor relations: Injunction. Various sub-lessees of a theater had defaulted in payments to the musicians hired to perform at the theater. Thereafter, the local musicians' union listed the theater as a defaulter and refused to accept a contract for its members to work there for another sub-lessee until past defaults were paid up. Such action was not in itself illegal but amounted to nothing more than an attempt by the union to require the owner to underwrite the debt. Therefore, the court would not grant injunctive relief to the theater owner and operator claiming injury.[58]

Mechanics' liens: Foreclosure. A materialman never gave home owners cautionary notice of his intention to claim his lien. The home owners

50. DeLoach v. Lanier, 125 F. Supp. 12 (N.D. Fla. 1954).
51. Davidson v. Davidson, 76 So.2d 303 (Fla. 1954).
52. FLA. STAT. § 744.01 (1953).
53. Hughes v. Bunker, 76 So.2d 474 (Fla. 1954).
54. FLA. STAT. § 742.06 (1951).
55. Crosby v. Calhoun, 76 So.2d 297 (Fla. 1954).
56. FLA. STAT. § 77.01 (1953); FLA. RULES OF CIVIL PRO. rule 3.15.
57. Gordman Corporation v. Bethell Construction Co., 77 So.2d 449 (Fla. 1955).
58. Miami Federation of Musicians v. Wompearce, Inc., 76 So. 2d 298 (Fla. 1954).

had no knowledge that the jalousies which the contractor had installed belonged to any one other than the contractor. The materialman so conducted himself as to allow the home owners to infer that the jalousies were the property of the contractor. The materialman, therefore, could not assert his mechanics' lien against the home owners. So held, despite the fact that the home owners had failed to obtain, upon final payment, a sworn statement [59] from the contractor relating to the liens.[60]

Specific performance: Vendor and purchaser. The vendors were husband and wife. It was peculiarly within their knowledge that their contract for the sale of a ranch had not been signed by them in the presence of two witnesses. They had delivered the contract to their own broker with the understanding that he have two witnesses subscribe their names before the contract was sent to the purchasers. The vendors thereby led the purchasers to perform the contract, incur expenses, and materially change their position.[61] The vendors were thereby estopped to contend that the contract was unenforceable because it was not signed by the vendors in the presence of two witnesses.[62]

Suit in interpleader: Escrow agent. An escrow agent had in its possession funds which were the subject matter of a controversy between the parties to a contract for the purchase of real estate. The agent disclaimed any interest in the funds. The Supreme Court held that it was proper for the escrow agent to invoke the jurisdiction of the equity court, in a suit in interpleader, to settle the parties' rights.[63]

Suit to quiet title: Municipal deeds. The plaintiff's chain of title included a quitclaim deed executed in 1952 by the Mayor and Clerk of the City and was duly authorized by the city council. The defendant's claim of title included a quitclaim deed executed in 1943 by the Mayor and Clerk but allegedly unauthorized by the council, as required by a city ordinance. The Supreme Court held that the 1943 deed was merely voidable, not absolutely void. Therefore, the validity of the deed may not be collaterally attacked in a suit, to which the city is not a party[64]

EXEMPTIONS. *Homestead.* The acts of a husband in making monthly payments on his *wife's* property and painting the kitchen and bathroom of such property will not make the property homestead property, even though the husband and wife may be living on the property.[65]

Insurance. A statute[66] exempts cash surrender values of insurance policies on the lives of residents of the state from attachment, garnishment

59. FLA. STAT. § 94.04 (1), (3) (1953).
60. Southern Supply Distributors v. Landsdell, 76 So.2d 266 (Fla. 1954).
61. FLA. STAT. § 689.01 (1953).
62. Cox v. LaPota, 76 So.2d 662 (Fla. 1954).
63. Drummond Title Company v. Weinroth, 77 So. 2d 606 (Fla. 1955).
64. Goldtrap v. Bryan, 77 So.2d 446 (Fla. 1955).
65. De Jonge v. Wayne, 76 So.2d 273 (Fla. 1954).
66. FLA. STAT. § 222.14 (Fla. 1953).

or legal process in favor of the insured's creditors. The statute is not inapplicable to such values of policies issued before the insured became a resident of the state, where he resides therein when the values are sought to be subjected to garnishment or other legal process.[67]

INSURANCE. *Hospitalization: Policy rider.* The insured was indemified against expenses incurred for hospital care and nursing services. After the insured developed carcinoma of the breast, the insurer paid the insured's claim and cancelled the policy. Later, the policy was revived by attaching a rider which provided for exclusion of liability for "Carcinoma or any Disease of the Breast and/or operation therefor." The Supreme Court held that the rider did not exclude the insurer's liability when the insured developed carcinoma of the stomach or intestine.[68]

INTERNAL REVENUE. *Cost of goods sold.* The court held that the amount paid by the taxpayer for materials purchased, though in excess of O.P.A. wholesale ceiling prices, must be considered as part of the cost of goods sold by the taxpayer for the purpose of computing income and excess profits to taxes.[69]

LABOR RELATIONS. *Injunction: Appeal and error.* The plaintiff failed to give a bond on the entering of a temporary injunction.[70] The chancellor was directed to dissolve the injunction or require the posting of an injunction bond. The amount was to be sufficient to indemnify the petitioner for such costs and damages as it might incur or suffer in the event that it ultimately be determined that it was wrongfully enjoined or restrained by the temporary injunction.[71]

LANDLORD AND TENANT. *Innkeeper and guest.* In a negligence action, the appellant contended that the relationship of innkeeper and guest existed. The court, in support of this argument, stated that although there was in fact, a so-called lease agreement, the incidents and services to be performed under the agreement, such as maid service and garbage disposal, were more indicative of an innkeeper-guest relationship than that of landlord-tenant.[72]

REAL ESTATE. *Brokers: Commission.* An action was brought by a real estate broker to recover commissions. The eventual sale was consummated on terms different from the original listing contract. It was also more than a year later and more than six months after the seller's rejection of an offer different from the original listing contract. There was no showing of negotiations by the seller and purchaser at the instance of the broker. Under these circumstances the broker was not entitled to a commission.[72]

67. Slatcoff v. Dezen, 76 So.2d 792 (Fla. 1954).
68. Rigel v. National Casualty Company, 76 So.2d 285 (Fla. 1954).
69. Naffco, Inc. v. Fahs, 126 F. Supp. 794 (S.D. Fla. 1954).
70. FLA. STAT. § 64.03 (1953).
71. International Brotherhood, etc. v. Miami Retail Groc., 76 So.2d 49 (Fla. 1954).
72. Goodell v. Morris Lansburgh and Associates, 77 So.2d 247 (Fla. 1955).

Mortgages: Estoppel. The plaintiff sued to re-establish a mortgage on the ground that satisfaction thereof was procured as a result of alleged fraud or mistake. The plaintiff-mortgagee had knowledge of the fact that the party entrusted with the money to satisfy the mortgage had misappropriated the funds. Instead of promptly notifying the mortgagors of this, the mortgagee continued to deal with the mortgagors and to redeposit a bad check, drawn on these funds. The Supreme Court held that equity would not assist the plaintiff in re-establishing its mortgage under the circumstances. The plaintiff was estopped to enforce the mortgage lien as against the defendant-mortgagors as innocent third parties.[74]

SCHOOLS AND SCHOOL DISTRICTS. *Compensation of officers.* The legislature had authority to reduce the compensation of a member of the Board of Public Instruction of Dade County from two-hundred dollars to what he could save from an allowance of ten-dollars under the general statute[75] for each meeting he attended.[76]

Constitutional Law. The constitutional provision[77] that a tax levied for payment of interest and principal of bonds of special tax school districts shall not be applied to any purpose other than payment of the principal and interest of bonds, does not bar accrual of interest on *defaulted* coupons.[78]

STATUTES. *Death: Future earnings.* An action was brought for wrongful death and under the survival statute,[79] for loss of decedent's earnings for her life expectancy. The Supreme Court held that under the survival statute there can be no recovery for impairment of earning capacity beyond the death of the injured person.[80]

Railroad and Public Utilities Commission: Jurisdiction. A proposed route of an automobile limousine service did not lie wholly within the corporate limits of any city or town or entirely within the cities and towns whose boundaries adjoined. The Railroad and Public Utilities Commission had jurisdiction to grant a certificate of public convenience and necessity. It was not precluded from doing so by a statutory provision,[81] exempting from regulation of the commission, operations between cities and towns whose boundaries adjoined.[82]

TORTS. *Contributory negligence: Innkeepers.* The plaintiff was a paying guest in the defendant's hotel. She entered a dark hallway knowing of

73. Burbridge v. Berk, 77 So.2d 785 (Fla. 1955).
74. United Service Corp. v. VI-AN Construction Corp., 77 So.2d 800 (Fla. 1955).
75. FLA. STAT. § 242.02 (1953).
76. Graham v. Board of Public Instruction of Dade County, 76 So.2d 874 (Fla. 1955).
77. FLA. CONST. Art. 12, § 17 (1953).
78. *In re* Board of Public Instruction, 76 So.2d 863 (Fla. 1955).
79. FLA. STAT. §§ 45.11, 768.01 (1953).
80. Ellis v. Brown, 77 So.2d 845 (Fla. 1955).
81. FLA. STAT. § 323.29 (1953).
82. Roberts v. Carter, 76 So.2d 789 (Fla. 1954).
83. Brant v. Van Zandt, 77 So.2d 858 (Fla. 1954).

the existence of a stairway descending from the hallway. She proceeded and, while attempting to find a light switch, plunged down the stairway, suffering injuries. The Supreme Court held that the plaintiff had been guilty of contributory negligence as a matter of law.[83]

Infants: Next friend. The plaintiff, eight years prior to this suit and while still a minor had been injured in an accident while a passenger in an automobile belonging to the defendant. The plaintiff at that time sued through her stepfather as next friend for injuries sustained in the accident. She received a jury verdict of $4,900. This amount was paid over to the minor's next friend.[84] Now having attained her majority, the plaintiff brings this suit against the same defendant contending that she at no time received the proceeds of her judgment. The Supreme Court held that the defendant was not liable to the plaintiff on the judgment under these circumstances.[85]

Negligence: Automobiles. An action was brought for the death of the plaintiff's husband as the result of a head-on collision of his automobile and the defendant's automobile. The facts showed that the husband's automobile went back and forth from one side of the highway to the other and the defendant drove onto the left side of the highway to avoid the husband's automobile. He was struck by the husband's automobile when it suddenly returned to its proper side of the highway. The Circuit Court entered a judgment on a *directed verdict* in favor of the defendant. The Supreme Court affirmed the judgment.[86]

Negligence: Principal and agent. The defendant corporation lent its automobile to the plaintiff's husband, an employee, to be used by him on a purely personal mission. While driving the car on the highway, with the knowledge and consent of the owner, the husband wrecked the vehicle. His wife, a passenger, was injured. The Supreme Court held that the fact that the plaintiff could not sue her husband for injuries sustained as a result of his negligence, did not relieve the defendant, as owner of the automobile, from liability. The principal does not share its agent's personal immunity from suit.[87]

WORKMEN'S COMPENSATION. *Evidence.* In a workmen's compensation proceeding, evidence showed that a man employed as a fruit picker was found dead lying on wet ground near an aluminum ladder. He had been carrying the ladder in a location immediately beneath electrical wires which were low enough to have been touched by the ladder. In absence of proof that death was the result of natural causes, the evidence was sufficient to sustain the finding that the deceased died from electrocution arising out of an in the scope of his employment.[88]

84. FLA. STAT. § 45.02 (1953).
85. Moye v. General Motors Corporation, 77 So.2d 875 (Fla. 1955).
86. Burdette v. Phillips, 76 So.2d 805 (Fla. 1954).
87. May v. Palm Beach Chemical Company, 77 So.2d 468 (Fla. 1955).
88. Johnson v. Dicks, 76 So.2d 657 (Fla. 1954).

Master and servant: Third party tort-feasor. The Supreme Court held that a co-employee or fellow servant is a "third party tort-feasor" within the Workmen's Compensation Act.[89] There is no contract as between co-employees, and the compensation act does not govern their relationship with one another. Therefore, a fellow employee whose alleged negligence resulted in the death of the decednt could be held responsible.[90]

Subrogation. A workmen's compensation insurer's subrogation rights had been fully and completely adjudicated in an action brought by the injured employee against a third-party tort-feasor. The employee, in a subsequent proceeding, sought to procure a continuation of the compensation payments. At this point the insurer attacked the validity of the statute[91] under which the award was made. The Supreme Court held that such rights could not be litigated anew in this proceedings.[92]

Time of review. The application of the employer and the insurance carrier to review an order of the Deputy Commissioner, granting the employee's widow compensation, was not timely.[93] More than twenty days had elapsed between the date the Deputy Commissioner's order was mailed and the date of presentation of the application to the Deputy Commissioner.[94]

Total disability. The claimant for Workmen's Compensation[95] had suffered the loss of an eye. He had been paid compensation for permanent partial disability. Thereafter he developed an occupational disease which left him totally disabled. The Supreme Court held that the claimant was entitled to full compensation for permanent total disability without deduction for payments made on account of prior injury.[96]

ZONING. *Change in neighborhood.* The plaintiffs filed a motion for summary decree, supported by affidavits showing the vast change in the character of the neighborhood since the original zoning of the area as residential. The Supreme Court held that the evidence of change in character of the neighborhood was sufficient to sustain the decree.[97]

Municipal corporations. The city amended a zoning ordinance so as to eliminate from permissive uses beachwear, clothing, jewelry and other similar shops in hotels of 100 rooms or more. The Supreme Court held that the amendment bears no substantial relation to the health, morals, welfare or safety of the public. It is discriminatory, unconstitutional and

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89. FLA. STAT. §§ 440.01, 768.01 (1953).
90. Frantz v. McBee Company, 77 So.2d 796 (Fla. 1955).
91. FLA. STAT. § 440.39 (3,4) (1953).
92. Arex Indemnity Company v. Radin, 77 So.2d 839 (Fla. 1955).
93. FLA. STAT. § 440.25 (3) (c), (4) (1953).
94. H. W. Sperry, Inc. v. Matthews, 76 So.2d 487 (Fla. 1954).
95. FLA. STAT. § 440.15(1), (5)(b) (1953).
96. International Paper Company v. Merchant, 77 So.2d 622 (Fla. 1955).
97. City of Miami v. Ross, 76 So.2d 152 (Fla. 1954).

void as to a hotel, the construction of which had been planned and commenced prior to the amendment.[98]

Municipal corporations. A zoning ordinance amendment purported to restrict the types of business establishments that could be contained in hotels with 100 or more guest rooms. The Supreme Court held that this was arbitrary, discriminatory, and void, in the absence of the showing of a change in conditions warranting a re-zoning.[99]

98. City of Miami Beach v. 8701 Collins Ave., 77 So.2d 428 (Fla. 1954).
99. Charnofree Corporation v. City of Miami Beach, 76 So.2d 665 (Fla. 1954).